

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PENTACON BV, et al., : Case No.: 23cv2172

Plaintiffs, :

v. :

VANDERHAEGEN, et al., : New York, New York

Defendants. : May 19, 2023

-----: CONFERENCE

TRANSCRIPT OF STATUS CONFERENCE HEARING
BEFORE THE HONORABLE KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 THE DEPUTY CLERK: Your Honor, this is in
2 the matter of Pentacon BV, et al., versus
3 Vanderhaegen, et al.

4 Counsel, please state your name for the
5 record, beginning with plaintiffs.

6 MR. FEIRSON: Steve Feirson on behalf of
7 the plaintiffs from Dechert.

8 THE COURT: Sir, good morning. This is
9 Judge Failla. Assisting you this morning is who,
10 please?

11 MR. MAZER: Good morning, Your Honor.
12 Matthew Mazur from Dechert as well.

13 THE COURT: There we go. Thank you, sir.
14 And good morning to you.

15 Representing Mr. Vanderhaegen and the
16 Pelican entities, may I have an appearance, please.

17 MR. McCORMACK: Yes. Good morning, Your
18 Honor. This is Tom McCormack, and I'm with my
19 colleagues, Robin Ball and Bob Kirby from Norton
20 Rose Fulbright, on behalf of Vanderhaegen,
21 Vanderhaegen Trust and the Pelican entities.

22 THE COURT: Sir, thank you so much. And
23 good morning to you as well.

24 And then representing Origis USA LLC?

25 MR. DENTON: Good morning, Your Honor.

1 Blake Denton from Latham & Watkins for Origis USA
2 LLC.

3 THE COURT: Thank you, sir.

4 And there's no one represent -- are you
5 also representing Origis Energy LLC, sir?

6 MR. DENTON: No. That would be the
7 Norton Rose -- one of the Norton Rose parties.

8 THE COURT: Okay. Thank you.

9 And, Mr. McCormack, are you volunteering
10 for Origis Energy LLC?

11 MR. McCORMACK: Actually, that entity no
12 longer exists. So we are, yes. So to the extent
13 that it had any role in any of these matters, we
14 would be representing it.

15 THE COURT: Okay. I very much appreciate
16 the clarification.

17 Good morning to each of you this morning.
18 Thank you very much for participating in this, our
19 initial conference in this case, which is also a
20 pre-motion conference in this case. In preparation
21 for this proceeding, I've reviewed the complaint and
22 the removal notice, and I've reviewed as well the
23 pre-motion letters and plaintiffs' responses to
24 them.

25 Looking through the materials I have, I

1 don't actually think I have a copy of the share
2 redemption agreement, so, to a degree, I am limited
3 in my knowledge because I haven't had a chance to
4 review it. I suspect that I will not be able to
5 persuade the defendants, the extant defendants, from
6 moving to dismiss the claims against their
7 respect -- each of them. And so, instead, I guess
8 I'd like to just understand a little bit more about
9 the case, and as well to understand from plaintiffs
10 whether they wish to amend their complaint before
11 motion practice.

12 I do understand that prior to the
13 removal, there had been an agreed-upon motion to
14 dismiss briefing scheduled. But, again, I don't
15 want to have the situation where a motion to dismiss
16 is filed and it's responded to with a proposed
17 amended complaint. So I'd like to get that out of
18 the way now. And then just, again, as I mentioned a
19 few moments ago, I don't have the SRA, so I'm, sort
20 of, speaking from a position of ignorance in some
21 respects. But I was having -- and I'd like to
22 engage with plaintiffs' counsel on this. I was
23 having a little difficulty with some of the
24 arguments, in particular the alter-ego arguments
25 with respect to Mr. Vanderhaegen.

1 So let me ask Mr. Feirson if -- first,
2 whether there's an appetite for amendment, and
3 second, if he could engage with me on my issues with
4 their alter ego. Thank you.

5 MR. FEIRSON: Yes, thank you, Your Honor.
6 This is Mr. Feirson.

7 The -- there is, as there always is in a
8 situation like this, an appetite, having seen the
9 three-page letters, to consider whether some
10 amendment could take place which would clarify some
11 of the claims, and I think here we can probably do
12 that. We can certainly attempt, even though it's
13 prediscovery and before we see any motion to
14 dismiss, to flesh out the alter-ego point.

15 We -- the complaint -- the benefit, at
16 least we thought, of the complaint being as lengthy
17 and detailed as it was, was that it set forth a lot
18 of the interaction. But some of it, as it pertains
19 specifically to the alter-ego point, probably not as
20 clear as it might have been.

21 So, yes, with respect to the alter-ego
22 point and the -- whether it's an aiding and abetting
23 point that goes along with the alter-ego point, we
24 would have an interest in amending to try to clarify
25 that.

1 THE COURT: Let me understand this well,
2 sir, your position with respect to the release. As
3 I understand it, Mr. Vanderhaegen and his team
4 believe that it bars all of these claims, and you --
5 is it really the case that there's a carve-out for
6 fraud? I simply don't know. I haven't seen the
7 document.

8 MR. FEIRSON: Yeah, well -- and we
9 apologize to the Court because we obviously should
10 have -- someone should have supplied the Court with
11 the SRA. But, yeah, there is -- there are
12 carve-outs, and the carve-outs appear in Section 4.8
13 and Section 8.6(a). And this specific lead-in
14 language, including the language if you look at
15 9.11, which is what Norton Rose points to, says,
16 "except to the extent provided in the transaction
17 documents." So the waiver is predicated and
18 conditioned on the fact that there be nothing else
19 in the transaction documents that in any way would
20 undercut that.

21 And if you look at 4.8, it carves out
22 quoting cases of fraud, also carves out cases that
23 depend on Article 4. And 8.6, similarly, the exact
24 wording is, "except for claims based on fraud," so
25 yeah. So, I mean, our position is -- and you can --

1 we will be able to see it, and would have been able
2 had someone provided the Court with the SRA, that,
3 yeah, there are, in fact, these carve-outs.

4 THE COURT: And, sir, I appreciate you
5 beating yourself up, I do, but just to be clear, you
6 didn't know the case was coming to me. And maybe
7 somewhere in the state court file, it's there. I
8 just don't have it in the materials I've received.

9 Mr. Feirson, you'll excuse me for asking
10 this because, for me, it is the triumph of hope over
11 experience, but is there any discussion, or has
12 there been any discussion, regarding a pre-motion
13 ADR proceeding, either a settlement conference or a
14 mediation before we get into what, for me, is going
15 to be some pretty extensive motion practice.

16 MR. FEIRSON: There's an -- I think my
17 colleagues would agree with this. At least with
18 respect to the Norton Rose parties, there's been a
19 very, sort of, superficial, cursory discussion about
20 that, which I think didn't go very far because it
21 ended more with, well, maybe we ought to see what
22 the motion to dismiss stage looks like first, or at
23 least have some fact discovery first. But I
24 wouldn't say that we had any serious discussion
25 about that.

1 THE COURT: All right. No, I appreciate
2 that. Okay.

3 Mr. Feirson, those were the questions
4 that I had for you, sir. I do want to hear from
5 defense counsel, but before I do, is there anything
6 that you want to call to my attention that you
7 believe might not be as clear as you want it to,
8 either in the complaint or in the pre motion
9 correspondence?

10 MR. FEIRSON: Again, I would -- I'd go
11 back to the fact that a lot of the items that were
12 set forth in the admittedly very brief three-page
13 letter from the Norton Rose parties and from Latham
14 is -- has its answer in various allegations in the
15 complaint and/or in the SRA itself. And so any
16 process which can lay that out for the Court in
17 greater detail, I think, would be beneficial for
18 all -- for everyone.

19 THE COURT: Okay. Thank you very much.

20 Mr. McCormack, I'll turn to you, sir.
21 And, Mr. McCormack, I appreciate your clients'
22 desires -- your clients', plural, desires to have
23 this case dismissed, but, you know, as cases go, as
24 complaints go, it was pretty detailed. So I can
25 hear from you with respect to the relief provision

1 or with respect to anything else that you've heard
2 me discuss with Mr. Feirson this morning, or you can
3 stand on your written submissions.

4 MR. McCORMACK: Well, thank you. I
5 appreciate the opportunity this morning to speak
6 with you.

7 Let me cover a couple of things first,
8 which is you are correct. We think that we have
9 several bases on both legal and pleadings issues to
10 have these claims dismissed. And I think that's --
11 you said correctly at the outset that we were
12 inclined to do that. We remain inclined to do that.
13 And I appreciate the inquiry.

14 Relative to this -- remember, this is a
15 contract that was signed by certain parties, and
16 then there's non-signatories to this contract. And,
17 obviously, to the extent that one seeks to bring
18 breach of contract claims against a non-signatory,
19 that's a fundamental problem. And that -- that's
20 true with several of our defendants. And then -- so
21 that's with regard to the breach of contract claims,
22 generally.

23 Now, with regard to the release, I
24 think -- and you are at disadvantage not having the
25 SRA in front of you. I mean, the SRA is exactly

1 what you think it is. It's a part -- remember,
2 these are immensely sophisticated people. The
3 sellers to my client are very successful, wealthy,
4 private equity types in Belgium, and they got into
5 this contract. And it's one of those classic
6 contracts -- I'm sure you've seen it, Your Honor --
7 a very, very sophisticated contract with people that
8 very carefully lay out what the -- what claims are
9 in and what claims are out, et cetera. And you'll
10 see that when you see the agreement. And they made
11 the decision to sell making three times their money,
12 and they now have, as we said, seller's regret, but
13 I have a set piece here, but I won't bore you with
14 it. I'll just get to your question.

15 THE COURT: All right.

16 MR. McCORMACK: I'll get to your
17 question, which is relative -- I think that when you
18 read the relevant sections of this agreement, first
19 of all, the release is completely valid against the
20 three non-parties that we're seeking to get out of
21 the case. And that's because 9.11, as Mr. Feirson,
22 said, excludes from its broad scope only
23 hypothetical claims that are pursuant to and to the
24 extent provided in the transaction documents.

25 But Section 4.8, which, apparently, he's

1 relying upon, does not provide for claims against
2 non-party affiliates. To the contrary, that section
3 is a disclaimer of additional representation and
4 warranties made by contracting parties or any of
5 their respective affiliates or representatives. It
6 does not purport to affirmatively create any claims
7 or liabilities. The plaintiffs' reading of
8 Section 4.8 is also inconsistent with the
9 plaintiffs' express disclaimer in Section 9.11 of,
10 "any reliance upon any non-party affiliates with
11 respect to any representational warranty made as an
12 inducement to this agreement."

13 In our view, the contracting parties
14 excluded cases of fraud from the disclaimer of
15 additional representations and warranties in
16 Section 4.8, but chose not to exclude cases of fraud
17 from Section 9.11's disclaimer and release. And I'm
18 going to say this because I believe it. I don't
19 think it's close. So we think that when you look at
20 the specific provisions involved, recognizing the
21 sophistication of the agreement here, 9.11 was
22 intended to release these claims independent of what
23 was ever going on at 4.8. That had to do with a
24 whole different set of subject matters having to do
25 with reps and warranties. So that's our view on

1 that, Your Honor.

2 Relative to the -- one of the key things
3 that we've noticed in their complaint is that they
4 take a great deal of issue with so-called opinions
5 of value, and we have lots of reasons for why that
6 is not actionable fraud. And I know you've been
7 down this path many times, Your Honor, as have we
8 and Mr. Feirson, but Rule 12 and Rule 9(b) require
9 you to do certain things. And one of the things
10 that we are fortunate about is that many of the
11 items that are listed in the complaint are
12 referenced. And so we can actually put some of
13 those documents and materials before the Court to
14 see that they are very different than what they're
15 alleged to be in the complaint.

16 And, therefore, with regard to both the
17 statement of alleged fraud and then reliance on the
18 alleged fraud, et cetera, there are many things that
19 are lacking, from our perspective, relative to the
20 pleading requirements.

21 And then one key issue that you've seen
22 us raise, and perhaps also our friends at Latham,
23 which is, there's a rather promiscuous use of
24 everybody did everything all at the same time. And
25 that is not acceptable either under the relevant

1 standards.

2 So our arguments with regard to fraud, I
3 think, are well stated. They use a lot of
4 adjectives in their complaint, but that -- but a lot
5 of adjectives doesn't create a relevant or pertinent
6 or cognizant fraud claim.

7 And then one of the issues in the case,
8 Your Honor, is fiduciary duties. And in the
9 fiduciary duty claims, you've seen what we said in
10 our presentation, which is effectively that these --
11 there are no fiduciary duty claims here, that the
12 fiduciary duty issues here are governed by Belgian
13 law, and Belgian law doesn't recognize --

14 THE COURT: And I'd ask you, please,
15 actually, to pause right there. Thank you so much.

16 MR. McCORMACK: Yes.

17 THE COURT: That's what confuses me.
18 Does the SRA recite New York law anywhere?

19 MR. McCORMACK: Yes, it does. It says --

20 THE COURT: What does it say, please.

21 MR. McCORMACK: Let me find it and I'll
22 give it to you.

23 Sorry, Judge. I didn't have that one
24 tagged.

25 THE COURT: Oh, it's no problem. That's

1 okay.

2 MR. McCORMACK: It's Section 9.12,
3 Governing Law, "This agreement and any claim arising
4 out of or in connection with this agreement shall be
5 governed by, construed and enforced in accordance
6 with the laws of the State of New York without
7 giving effect to any conflict of law, rules or
8 principles that would result in the application of
9 the laws of any other jurisdiction."

10 And their argument is that that trumps
11 the internal affairs doctrine, and our argument is
12 that it does not. And there's case law in this
13 district that -- it says the same thing that we're
14 saying, that the internal affairs doctrine is not
15 trumped by a choice of law provision in a contract.
16 And there's good reason for that. But as a
17 fundamental question, I appreciate your asking it.
18 Of course, we would brief it if it comes to that,
19 that the internal affairs doctrine of Belgium will
20 apply. And under Belgian law, there is no fiduciary
21 duty owed to shareholders. There is a notional
22 sense of loyalty in Belgium, but that runs only to
23 the company, not to the shareholders. So we'll have
24 a Belgian law affidavit which carefully lays out the
25 reasons why there is no fiduciary duty claim here.

1 And then finally, Your Honor -- and I
2 keep going until stopped, Your Honor, as you
3 noticed.

4 THE COURT: Yeah, well -- and I'm going
5 to ask you to pause because, were you here, you'd
6 see my hand being raised.

7 Mr. McCormack, with respect to the
8 affidavit that you're contemplating, is it your
9 belief that I can consider that in the context of a
10 12(b)(6) motion?

11 MR. McCORMACK: Yes. Our assumption has
12 been that you can.

13 THE COURT: Okay.

14 MR. McCORMACK: It's a -- and it's funny.
15 I just talked about that yesterday with Robin and
16 Bob. It is a question of law, interestingly. And
17 once you submit such an affidavit -- now that I'm
18 being open, I wondered whether there was an element
19 of question of fact to it, but the case law is a
20 question of law. And so the answer is, yes, I think
21 we can put that in at this motion stage.

22 THE COURT: Okay. So I'll let you give
23 me your final point. Thank you so much.

24 MR. McCORMACK: Yes, Your Honor.

25 Just the final point is that -- and this

1 has been frustrating for my client, certainly. This
2 is a very comprehensive contract drafted by very
3 sophisticated people which intended to limit
4 entirely the types of claims that could be brought.
5 And relative to the breach of contract claims -- and
6 I don't know if you've seen a lot of it, Your Honor,
7 but this has really gained some force in the
8 corporate world in the last few years, which is they
9 have contracts that eliminate all claims, all common
10 law claims, all statutory claims, all claims except
11 for very specific claims that the parties have been
12 building in their contract. And that's the case
13 here.

14 And the provisions that are relevant here
15 are really 4.4, which is the actual statement of the
16 reps and warranties that are really the core of the
17 claim, and then an indemnification right. So on the
18 strict breach of contract issues, we would argue
19 that the way that they pled contract claims are
20 inconsistent with the specifics of the provisions in
21 the contract that deal with what was allowed and
22 what wasn't, and that there's specific language in
23 the contract that says, other than these very, very
24 specific things that we'll let a lawsuit proceed on,
25 we don't let anything -- no other statements or

1 comments, et cetera, are going to be subject to
2 that.

3 So our breach of contract defense is,
4 effectively, your breach of contract is wildly
5 inconsistent with the provisions you agreed to
6 relative to the breach of contract claims. So
7 that's our pitch on that one, Your Honor.

8 THE COURT: Okay. Thank you very much.
9 And I do appreciate the detail that you've just
10 given me in your presentation because, again, I'm
11 looking forward to reading the actual documents that
12 go with this. Okay.

13 And, Mr. McCormack, I think Mr. Feirson
14 has answered this question for you, but I'm
15 understanding from his comments and your
16 presentation to me this morning that it is your
17 client's wish to, first, engage in some dispositive
18 motion practice and then see what remains before
19 discussing ADR. Am I correct?

20 MR. McCORMACK: Yes, Your Honor. And
21 another thing you should be aware of, because of the
22 nature of these parties and their sophistication,
23 they had a very specific protocol to deal with any
24 kind of issues that might come up after all this
25 ended. And there is a -- Mr. Feirson's client

1 pressed the button that exists in this SRA to allow
2 them to seek significant documentation and
3 information from us prior to a lawsuit being filed.
4 I think we produced 136,000 pages of documents.

5 THE COURT: Oh, okay.

6 MR. McCORMACK: And so there has been a
7 significant amount of information exchanged. But,
8 you know, on a fundamental level, we talked about --
9 and I guess Mr. Feirson probably characterized it
10 exactly right today. There was some conversations,
11 but I think the parties are so far apart as to what
12 they think happened here that there wasn't a great
13 deal of opportunity to settle it until -- to use the
14 term that litigators -- and sorry, Your Honor,
15 because you're going to be involved in that, which
16 is drawing a little blood. So I don't think there's
17 an appetite for our clients to settle this at this
18 point, either side.

19 THE COURT: Understood. And, again, just
20 appreciate the candor about that.

21 Mr. Denton, may I hear from you, please,
22 sir.

23 MR. DENTON: Yes, Your Honor. Good
24 morning. Blake Denton from Latham & Watkins for
25 Origis USA LLC.

1 So, Your Honor, you had asked earlier
2 about alter ego, which I think is particularly
3 relevant for my client. My client wasn't the buyer
4 or seller in this transaction. My client didn't get
5 any money from it. My client -- you'll see when you
6 see the SRA, my client didn't make the contractual
7 representations that plaintiffs say were violated.
8 My client wasn't the one providing diligence
9 materials or swearing to their accuracy. My client
10 did no fiduciary duties to the plaintiffs. And
11 so -- and the plaintiffs, in their letter, really
12 don't lay a glove on any of that. And instead, they
13 raise this alter-ego argument that is not in their
14 complaint, and I think for good reason. And I think
15 it would be a mistake for them to add it now against
16 my client.

17 So, you know, Your Honor already knows
18 that alter-ego claims are, you know, rarely
19 permitted. They -- you know, courts, in general,
20 respect the corporate form, and you need to really
21 fit in a rare exception. And this case certainly is
22 not one of those rare exceptions. Indeed, my
23 client, Origis USA, is not even a wholly owned
24 subsidiary of Origis Energy. And we included a
25 little chart in our pre-motion letter which shows

1 that.

2 So my client, USA, was owned 80 percent
3 by Origis Energy and 20 percent by a wholly separate
4 company unrelated to Mr. Vanderhaegen called Global
5 Atlantic, and that's a sophisticated \$70 billion
6 company. It's not a defendant. It's not accused of
7 doing anything wrong. And I think that right there
8 ends any claim that Origis USA and its non-wholly
9 owned parent are somehow one and the same, or Origis
10 USA and Mr. Vanderhaegen are one and the same. And
11 even the cases that plaintiffs' cite in their letter
12 confirm that the American Fuel Corp. case denied
13 alter-ego liability because the company had two
14 shareholders and only one was accused of wrongdoing.

15 And then further, Your Honor, within USA,
16 there were five directors. Mr. Vanderhaegen was
17 just one of them. In fact, the plaintiffs had
18 double as many seats. They had two. They had more
19 voting power. And so, again, I don't understand how
20 they even can, with a straight face, make the
21 argument that Mr. Vanderhaegen and Origis USA are
22 the same thing. And as Your Honor will see when you
23 see the contract, my client was only party to the
24 contract that's written right on the front cover.
25 Could not be clearer. Origis USA is only party to

1 the contract for very limited purposes, which is to
2 pay a dividend up to Origis Energy, which is where
3 the plaintiffs' shares are and where the plaintiffs
4 were bought out of and where this entire dispute
5 sits. My client was to pay a dividend up to there
6 that was used to buy out the plaintiffs. And the
7 plaintiffs, as directors of Origis USA, specifically
8 authorized that dividend.

9 And so, given these facts, I don't know
10 how they can make the argument with a straight face
11 that my client, USA, is somehow the same as
12 Mr. Vanderhaegen, and Your Honor should disregard
13 the contract, which, right on the front cover, makes
14 clear we're not party to these provisions they claim
15 were breached and, instead, somehow hold us to
16 those, that Your Honor should say that whenever
17 Mr. Vanderhaegen was negotiating on his own behalf
18 with the plaintiffs for a transaction that
19 personally benefited him and the plaintiffs, that
20 somehow downstream Origis USA is responsible for all
21 that, or on the hook as an alter ego because I don't
22 think any of it makes sense.

23 And, frankly, it's really unfair, Your
24 Honor, because, you know, my client, as I mentioned,
25 didn't get anything out of this transaction. We

1 didn't get any money. We didn't -- nothing changed
2 in our structure. We were owned by two entities
3 before. We were owned by those exact same two
4 entities afterwards.

5 So my -- USA got no benefit. And the
6 party that later bought USA is Antin Infrastructure
7 Partners. Antin is not alleged to have done
8 anything wrong. Antin was not even on the scene
9 when the plaintiffs were bought out of
10 Origis Energy. The only thing Antin is alleged to
11 have done is to have paid a lot of money when it
12 bought USA a year and change later. And now, the
13 plaintiffs' argument seems to be, well, they should
14 pay a second time. They're trying to hold USA and,
15 you know, by extension, its owner on the hook for
16 something that we were not a part of at all.

17 And so this lawsuit is having real costs.
18 It's imposing, you know, a real impact on my
19 client's business. And so whether the plaintiffs
20 amend or don't amend, we would like to move to
21 dismiss quickly if they don't do the right thing and
22 just dismiss us out because we're not the right
23 party in this case.

24 THE COURT: Okay. I'm confident,
25 Mr. Denton, you've expressed these same thoughts to

1 Mr. Feirson and his team, correct?

2 MR. DENTON: Yes, Your Honor. Sure.
3 Yes. In our conversations, we've made that clear,
4 yes.

5 THE COURT: Okay. All right. Well, I
6 mean, not that my opinion matters at this point
7 because it's an under-informed opinion, but I do
8 find the allegations against this Origis Energy to
9 be part -- perhaps the weakest part of plaintiffs'
10 complaint. Plaintiff may be able to remediate it;
11 I'm just not so sure. But I'm -- I am sure that
12 Mr. Feirson and his team will think and think and
13 think some more before deciding finally on who makes
14 it into the next amended complaint.

15 Mr. Feirson, there was a schedule that
16 the parties proposed when the case was in state
17 court. May I please have a sense of the time that
18 you need to file or to consider filing an amended
19 complaint?

20 MR. FEIRSON: Yeah, we would -- if we're
21 going to file an amended complaint, we would intend
22 to do it within the 21 days provided for under
23 Rule 15.

24 THE COURT: Oh, okay. Although that's
25 what 20 -- are you saying 21 days from today, sir?

1 MR. FEIRSON: Yes, 21 days from today.

2 THE COURT: Okay. Hold on, please.

3 Sorry. My computer is freezing on me this morning.

4 Would that be June 9th, sir?

5 MR. FEIRSON: Now you're really testing
6 me. You're --

7 THE COURT: Okay. Okay.

8 MR. FEIRSON: I have to look at a
9 calendar.

10 THE COURT: No, don't do -- please don't
11 do that. June 9th it is.

12 For my friends who are considering filing
13 a motion, is 30 days a sufficient time period to do
14 that, or would you need more time? I -- because I'm
15 looking at -- I guess I'm looking at July 14th, if
16 that works for Mr. McCormack and Mr. Denton.

17 MR. McCORMACK: Your Honor, thank you.
18 One of the things we've seen is that -- I guess it
19 depends on what Steve -- I'm sorry -- what
20 Mr. Feirson does with his complaint. If he makes
21 minor additions to it, then that won't change our
22 circumstance, but if he does something more
23 significant, maybe it would. And a couple of
24 things --

25 THE COURT: I'm sorry. Mr. McCormack,

1 you're coming in very faintly. I'm only hearing
2 about half of what you're saying. Could you just
3 repeat that last sentence again. Thank you, sir.

4 MR. McCORMACK: Sorry about that. I hope
5 this is better.

6 THE COURT: It is, sir.

7 MR. McCORMACK: I think it depends on
8 what Mr. Feirson does with his complaint. If he
9 changes three paragraphs and tries to bolster the
10 alter-ego issues, then that won't be much of an
11 issue. We've done a lot of our work already. But
12 if he does something more meaningful to it, then
13 maybe we'd want a little bit more time. So hedging
14 that risk, I would say 45 days, if that -- if that's
15 tolerable to you, Your Honor.

16 THE COURT: It will be. It's slightly in
17 tension with Mr. Denton's desire to get this done
18 more quickly.

19 But, Mr. Denton, my schedule is awful
20 anyway, so does July 28th work for you, Mr. Denton?

21 MR. DENTON: Yes. I think that would
22 work on our -- and you're correct, Your Honor. I
23 mean, my client is very eager to try to get out of
24 this lawsuit as quickly as possible, but if that's
25 the best day for the parties, that's fine.

1 THE COURT: Okay. Now, Mr. Feirson, are
2 you contemplating a single unified brief in response
3 to the two motions?

4 MR. FEIRSON: To be honest, Your Honor, I
5 hadn't thought about that because I hadn't -- I was
6 expecting to see the motions and then decide, but
7 my --

8 THE COURT: All right.

9 MR. FEIRSON: -- predilection is to do
10 one unified brief.

11 THE COURT: Okay.

12 MR. FEIRSON: I think --

13 THE COURT: All right.

14 MR. FEIRSON: Okay.

15 THE COURT: So let's imagine, sir --
16 because I'm not interested in extending page limits
17 here, so let's imagine there'll be 25-page briefs
18 from Mr. McCormack and from Mr. Denton's teams. And
19 then you're asking -- at one point, sir, you were
20 asking for 60 days. I did not know whether that was
21 something you're still requesting.

22 MR. FEIRSON: Well, obviously, there's no
23 magic in 60 days, but at least 45 would be good,
24 Your Honor.

25 THE COURT: All right. Yes. But I'm

1 going to end up destroying someone's summer holidays
2 if I do that, so I will give you until
3 September 29th to file your opposition. And then
4 let me have, please, reply briefs by October 13th,
5 and we'll go from there. What we'll do is we'll
6 issue a minute entry that has all of these dates in
7 case you weren't able to write them down, but that
8 is the schedule for now.

9 Mr. Feirson, from my perspective, I've
10 addressed the things I wanted to. Is there anything
11 else you wish to bring to my attention?

12 MR. FEIRSON: The only thing is that, as
13 I'm sitting here thinking about whether it's going
14 to be one unified brief or two, some of that is
15 going to depend -- if we're going to have to respond
16 to 50 pages, our -- is our page limit going to be 25
17 if it's one?

18 THE COURT: No. If it's one brief, it's
19 one 50-page response.

20 MR. FEIRSON: Okay. Thank you, Your
21 Honor.

22 THE COURT: Yes. No, I mean, I'm cruel,
23 but not unreasonable, so I'm not worried about that.
24 Okay. Thank you.

25 Mr. McCormack, anything else to address

1 today, sir?

2 MR. McCORMACK: Yes. My team will kill
3 me if I don't raise this issue, Your Honor.

4 THE COURT: Go ahead.

5 MR. McCORMACK: We have been working hard
6 on this. As you know, it is a significant case,
7 involves, according to plaintiffs, \$500 million. It
8 involves foreign law. It involves multiple causes
9 of action. It involves comprehensive claims of
10 wrongdoing in the form of fraud and
11 misrepresentations. And I know that in our draft
12 briefing to deal with all that, it certainly
13 exceeded the page limits that Your Honor typically
14 uses. I know -- and we had put in, on behalf of all
15 the parties, a request for 35 pages. I was told
16 yesterday that even that was insufficient, but I
17 have the sense that you're not overly inclined to do
18 beyond that, but I'm going to catch a lot of heat
19 from my team off the phone call if I don't ask for
20 at least the 35 pages that we have.

21 And, again, I'm not wishing to take
22 anything from Latham. I think their arguments are
23 pretty straightforward and similar to what Mr. Blake
24 said today. Ours are a little bit more complicated.
25 They have lots of pieces to them. We're going to

1 write you a good brief and we're going to keep it as
2 short as we can, but it's very difficult to deal
3 with everything that's in that complaint and the
4 international pieces of it and the law piece,
5 everything in that 25 pages. So they begged me to
6 come and ask you for 40 pages. I'm going to, now,
7 retreat and beg for 35.

8 THE COURT: Okay. I'll give 35 to each
9 of you and Mr. Denton.

10 Mr. Feirson, I'm honor-bound to give you
11 70, but I have to believe there's some common facts.
12 You won't need all 70 pages. And for the love of
13 God, don't ask for more. But I'll give 35 pages,
14 and then 70 for the -- for a unified opposition
15 because I don't want to see Mr. McCormack's team
16 cry, so that's fine.

17 So, sir, yes, that has succeeded.

18 Mr. Denton, anything else to bring to my
19 attention today?

20 MR. DENTON: No. Thank you very much for
21 your time, Your Honor.

22 THE COURT: Of course. I thank you all
23 for your time and for coming prepared to this
24 conference. I wish you all well. We are adjourned.
25 Thank you.

1 MR. FEIRSON: Thank you, Your Honor.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Pentacon BV v. Vanderhaegen, et al., Docket #23cv2172 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano
ADRIENNE M. MIGNANO, RPR

Date: May 20, 2023